

### **REMARKS**

Claims 1-9, 11-25 and 28-30 are currently pending in the application. In the Office Action mailed March 28, 2011, claims 1-30 were rejected. Through this response, claims 1-9, 11-25 and 28-30 were amended. Claims 10, 26, and 27 were canceled. No new matter was added. Favorable consideration of the present application in light of the amendments to the claims is respectfully requested.

### **Information Disclosure Statement**

The listing of applicants' UK Patent Application No. 0406835.9 on page 9 and 15 of the specification has been included on the submitted Information Disclosure Statement Form PTO/SB/08a as WO 2005/092211. The referenced UK Patent Application is the priority application for the cited WO 2005/092211.

### **Claim Objections**

Claims 4-24 and 28-30 were objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim cannot depend from any other multiple dependent claim. Claims 4-9, 11-24, and 28-30 were amended to remove the multiple dependency of the claims. Withdrawal of this objection is respectfully requested.

### **Claim Rejections – 35 USC § 102**

Claims 1-3 and 25-27 were rejected under 35 USC § 102(b) as being anticipated by US 5,702,454 to Baumgartner ("Baumgartner"). This rejection is respectfully traversed.

In order to anticipate the present invention it must be shown that each and every element of the claim can be found in the reference. If it can be shown that one element of the claim is missing or not met by the cited reference, the rejection must be withdrawn.

Independent claim 1 has been amended to recite a spinal implant comprising a porous component and one or more fibrous filling elements provided within the porous component.

Baumgartner does not appear to disclose the limitation of a fibrous filling element. Instead, Baumgartner discloses rotational solids as the filling element. The spheres of Baumgartner are made from an elastic plastic material to elastically deform under stress. As Baumgartner fails to teach or disclose at least one claimed feature in independent claim 1, Applicants respectfully submit that the rejection under 35 USC §102 (b) should be withdrawn. Dependent claims 2-9 and 11-24 being dependent upon claim 1 should be allowable for the reasons as set forth above as well as for the additional features they contain. An indication of allowance is respectfully requested.

Independent claim 25 has been amended to recite a method for performing spine surgery for partial replacement of a nucleus of an intervertebral disc. The method comprises gaining access to the nucleus through an incision; removing at least part of the nucleus to create a space; inserting an implant into the space, the implant including an outer component manufactured at least in part of fabric and reduced to a small size to allow insertion into the space without enlarging the incision; and inserting at least one fibrous filling element into the outer component during surgery to expand the outer component.

As Baumgartner does not appear to disclose the claim limitation of inserting at least one fibrous filling element into the outer component, Applicants respectfully submit that the rejection under 35 USC § 102(b) of independent claim 25 should be withdrawn. Dependent claims 26 and 28-30 being dependent upon claim 25 should be allowable for the reasons as set forth above as well as the additional features they contain. An indication of allowance is respectfully requested.

The foregoing amendments have been made to place the present application in condition for allowance. It is believed that all of the pending claims have been addressed. However, the absence of a reply to a specific rejection, issue or comment does not signify agreement with or concession of that rejection, issue or comment. In addition, because the arguments made above may not be exhaustive, there may be reasons for patentability of any or all pending claims (or other claims) that have not been expressed. Finally, nothing in this paper should be construed as an intent to concede any issue with regard to any claim, except as specifically stated in this

paper, and the amendment of any claim does not necessarily signify concession of unpatentability of the claim prior to its amendment. Favorable consideration and allowance of the claims in this application is respectfully requested. In the event that there are any questions concerning this paper or the application in general, the Examiner is cordially invited to telephone the undersigned attorney so that prosecution may be expedited.

Applicants authorize payment of the \$245.00 small entity fee for a two-month extension of time, and the \$180.00 fee for submission of an Information Disclosure Statement to be charged to Deposit Account No. 50-2040 referencing docket number 174US1. In the event that there are any additional fees to be charged or payments to be credited, Applicants hereby request that any charges or credits be made to Deposit Account No. 50-2040 referencing docket number 174US1.

Respectfully submitted,

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